

Chapter 39. Regulation 58 Viatical Settlements

§3901. Purposes

A. The purpose of this regulation is to provide for the implementation of licensure of viatical settlement providers, brokers or any person soliciting a viatical settlement contract and to provide for related matters.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3 and 210.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:989 (October 1996).

§3903. Applicability and Scope

A. These regulations shall apply to any person soliciting a viatical settlement contract.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3 and 210.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:989 (October 1996).

§3905. Definitions

A. For purposes of this regulation:

Person—any natural or artificial entity including but not limited to individuals, partnerships, associations, trusts, or corporations.

Viatical Settlement Broker—a person who, for themselves or for another, offers or advertises the availability of viatical settlements, introduces viators to viatical settlement providers, or offers or attempts to negotiate viatical settlements between a viator and one or more viatical settlement providers for a fee, commission, or other valuable consideration. *Viatical settlement broker* does not include an attorney, accountant, or financial planner retained to represent the viator whose compensation is not paid by the viatical settlement provider.

Viatical Settlement Contract—a written agreement entered into between a viatical settlement provider and a viator in this state. The agreement shall establish the terms under which the viatical settlement provider will pay compensation or anything of value in return for the policyholder's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

Viatical Settlement Provider—a person who enters into a viatical settlement contract with a viator owning a life insurance policy or a viator who owns or is covered under a group policy insuring the life of a person who has a catastrophic or life-threatening illness or condition. *Viatical settlement provider* shall not include:

a. any bank, savings bank, savings and loan association, credit union, or other licensed lending institution which takes an assignment of a life insurance policy as collateral for a loan;

b. the issuer of a life insurance policy providing accelerated benefits under R.S. 22:644 and Regulation 44 promulgated by the Department of Insurance;

c. any natural person who enters into only one viatical contract in a calendar year.

Viator—the owner of a life insurance policy insuring the life of a person with a catastrophic or life-threatening illness or condition or the certificate holder who enters into an agreement under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of the insurance policy or certificate to the viatical settlement provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3 and 210.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:989 (October 1996).

§3907. License Requirements for Viatical Settlement Providers

A. A viatical settlement provider shall not enter into or solicit a viatical settlement contract without first obtaining a license from the Department of Insurance.

B. The application shall be on a form required by the Department of Insurance and accompanied by a fee of \$1,000.

C. All members, officers, and designated employees of a partnership, corporation, or other entity issued a license may act as a viatical settlement provider under the contract.

D. The license may be renewed yearly by payment of a fee of \$500 on or before May 1 of each year. Failure to pay the fee within the terms prescribed by the Department of Insurance shall result in the automatic cancellation of the license.

E. The applicant shall provide such information as required on forms prescribed by the Department of Insurance.

F. A viatical settlement provider may operate pursuant to the provisions in this law pending licensure by the Department of Insurance, but in no case shall a provider be allowed to operate without a license following June 1, 1996.

G. The minimum capital requirement shall be \$500,000, which may be in the form of a bond or cash or cash equivalents.

H. The Department of Insurance shall have the right to suspend, revoke, or refuse to renew the license of any viatical settlement provider as provided by law.

I. The Department of Insurance shall not deny a license application or suspend, revoke, or refuse to renew the license application or suspend, revoke, or refuse to renew the license of a viatical settlement provider without first conducting a hearing in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3 and 210.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:989 (October 1996).

§3909. License Requirements for Viatical Settlement Brokers

A. A viatical settlement broker shall not enter into or solicit a viatical settlement contract without first obtaining a license from the Department of Insurance.

B. The application shall be on a form required by the Department of Insurance and accompanied by a fee of \$50.

C. The license may be renewed yearly by payment of a fee of \$50. Failure to pay the renewal fee within the time prescribed shall result in automatic cancellation of the license.

D. Viatical brokers operating in this state shall be licensed by the Department of Insurance as a Louisiana life insurance agent, and appointed by a licensed viatical provider.

E. The applicant shall provide such information as required on forms prescribed by the Department of Insurance.

F. A viatical settlement broker may operate pursuant to the provisions in Part V-B of Chapter 1 of Title 22 of the R.S. of 1950 pending licensure by the Department of Insurance, but in no case shall a broker be allowed to operate without a license following June 1, 1996.

G. The Department of Insurance shall have the right to suspend, revoke or refuse to renew the license of any viatical settlement broker as provided by law.

H. The Department of Insurance shall not deny a license application or suspend, revoke, or refuse to renew the license of a viatical settlement provider without first conducting a hearing in accordance with the Administrative Procedure Act.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3 and 210.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:989 (October 1996).

§3911. Approval of Viatical Settlement Contract

A. As provided in R.S. 22:205, the Department of Insurance must approve a viatical settlement contract before it is used in this state. If the viatical settlement contract is disapproved, the Department of Insurance shall notify, in writing, the viatical settlement provider, specifying the reasons for disapproval of the contract form; and it shall thereafter be unlawful for such viatical settlement provider to issue such form in this state. In such notice, the Department of Insurance shall state that a hearing will be granted within 60 days upon written request by the provider.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3 and 210.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:989 (October 1996).

§3913. Reporting Requirements

A. On March 1 of each calendar year, each licensed provider shall file with the Department of Insurance an annual statement in addition to the following information for the previous calendar year:

1. for each policy viaticated:
 - a. date viatical settlement contract entered into;
 - b. life expectancy of viator at time of contract;
 - c. names of insurance company and face amount of policy;
 - d. amount paid by the viatical settlement provider to viaticate the policy; and
 - e. if the viator has died:
 - i. date of death; and
 - ii. total insurance premiums paid by viatical settlement provider to maintain the policy in force;
2. breakdown of applications received, accepted and rejected, by disease category;
3. breakdown of policies viaticated by issuer and policy type;
4. number of secondary market vs. primary market transactions;
5. portfolio size; and
6. source and amount of outside financing.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3 and 210.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:989 (October 1996).

§3915. Standards for Evaluation of Reasonable Payments

A. In order to assure that viators receive a reasonable return for viaticating an insurance policy, the following shall be minimum amounts.

Less than 6 months	(80 percent)
At least 6 but less than 12 months	(70 percent)
At least 12 but less than 18 months	(65 percent)
At least 18 but less than 24 months	(60 percent)

B. The percentage may be reduced by 5 percent for viaticating a policy written by an insurer rated less than the highest four categories by A.M. Best, or a comparable rating by another rating agency.

C. The commissioner shall have the discretion to permit a reduction to the minimum percentages set forth in §3915, by up to 10 percent, upon a determination by the Department of Insurance that economic conditions have changed to such an extent that such variance is warranted. The procedure for obtaining such variance is as follows:

1. the percentages will be reviewed annually by the commissioner and a bulletin will be issued not later than November 1 of the current year establishing the new percentages to be in effect for the following calendar year

commencing January 1 and continuing through December 31. The commissioner will issue a bulletin stating the details of the revised percentage;

2. the commissioner shall have the discretion to permit variance from the minimum percentages set forth in §3915 upon a determination by the Department of Insurance that a viator's insurance policy is within the contestability period permitted by R.S. 22:172;

3. the commissioner may permit variance from the minimum percentages set forth if the expected premium to be paid by the viatical settlement provider exceeds 5 percent of the face value of the policy.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3 and 210.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:989 (October 1996).

§3917. General Rules

A. With respect to policies containing a provision for double or additional indemnity for accidental death or any other additional death benefits, the additional payment shall remain payable to the beneficiary last named by the viator prior to entering into the viatical settlement contract, or to such other beneficiary, other than the viatical settlement provider, as the viator may thereafter designate, or in the absence of a designation, to the estate of the viator, unless otherwise mutually agreed to, in writing, by the viator and viatical settlement provider.

B. Payments of the proceeds pursuant to a viatical settlement shall be made in a lump sum. Retention of a portion of the proceeds pursuant to a viatical settlement by a provider or escrow agent is not permissible.

C. A viatical settlement provider or broker shall not discriminate in the making of viatical settlements on the basis of race, age, sex, national origin, creed, religion, occupation, marital or family status or sexual orientation, or discriminate between viators with dependents and without.

D. A viatical settlement provider or broker shall not pay or offer to pay any finder's fee, commission or other compensation to any viator's physician, attorney, accountant, or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator with respect to the viatical settlement.

E. Contacts for the purpose of determining the health status of the viator by the viatical provider or broker after the viatical settlement has occurred should be limited to once every three months for viators with a life expectancy of more than one year, and to no more than one per month for viators with a life expectancy of one year or less. The provider or broker shall explain the procedure for these contacts at the time the viatical settlement contract is entered into.

F. Viatical settlement providers and brokers shall not solicit investors who could influence the treatment of the illness of the viators whose coverage would be the subject of the investment.

G. Advertising Standards

1. Advertising should be truthful and not misleading by fact or implication.

2. If the advertiser emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

3. If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the advertiser during the past six months.

AUTHORITY NOTE: Promulgated in accordance with R.S. 22, Sections 3 and 210.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:989 (October 1996).

Chapter 41. Regulation 60C Advertising of Life Insurance

§4101. Purpose

A. The purpose of this regulation is to set forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts.

AUTHORITY NOTE: Promulgated in accordance with R.S. Title 22, Section 3.

HISTORICAL NOTE: Promulgated by the Department of Insurance, Office of the Commissioner, LR 22:1224 (December 1996).

§4103. Definitions

Advertisement

1. material designed to create public interest in life insurance or annuities or in an insurer, or in an insurance producer; or to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy including:

a. printed and published material, audiovisual material, and descriptive literature of an insurer or insurance producer used in direct mail, newspapers, magazines, radio and television scripts, billboards, similar displays, the Internet or any other mass communication media;

b. descriptive literature and sales aids of all kinds, authored by the insurer, its insurance producers, or third parties, issued, distributed, or used by such insurer or insurance producer including, but not limited to, circulars, leaflets, booklets, web pages, depictions, illustrations, and form letters;

c. material used for the recruitment, training, and education of an insurer's insurance producers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace, or retain a policy;

d. prepared sales talks, presentations, and material for use by insurance producers.